

MILDRED MARIE WELTY	*	NO. 24,186 EQUITY
VS.	*	
CLARENCE A. WELTY	*	IN THE
* * * * *	*	
CLARENCE A. WELTY	*	CIRCUIT COURT
Cross-Complainant	*	
VS.	*	FOR
MILDRED MARIE WELTY	*	FREDERICK COUNTY, MARYLAND
Cross-Defendant	*	

* * * * *

MEMORANDUM OF LAW

QUESTION PRESENTED: Under the facts of this case, did the straw party, Charles R. Smith, have sufficient title to the property in question to convey to Clarence A. Welty, Sr. and Marie M. Welty, as tenants by the entireties?

It is the contention of the Defendant that Charles R. Smith did not have sufficient title to convey to the parties to this cause as tenants by the entireties because the deed in question was lacking in delivery and recordation.

It is undisputed in this case that the straw deed has never been recorded as required by Article 21, Section 3-101 (formerly Article 21, Section 1) of the Annotated Code of Maryland, which provides that:

(a) General rule. "No estate of inheritance or freehold, * * *, or any mortgage or deed of trust or assignment or release thereof, shall pass or take effect unless the deed conveying the same shall be executed and recorded * * *."

Article 21, Section 12, of the Annotated Code of Maryland (Repealed in 1972 and re-enacted as Article 21, Section 4-101) provided:

"No deed of real property shall be valid for the purpose of passing title unless acknowledged and recorded as herein directed."

The Court of Appeals stated in Nickle vs. Brown, 75 Md 172 (1892), at page 186: